

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 17 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARK J. DECLEMENTS,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant - Appellee.

No. 09-35260

D.C. No. 3:08-cv-05001-BHS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted February 5, 2010
Seattle, Washington

Before: ALARCÓN, W. FLETCHER and RAWLINSON, Circuit Judges.

Appellant Mark DeClements (“DeClements”) appeals from the district court’s upholding of a partially favorable social security determination, seeking four more months of disability benefits. DeClements contends that the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

uncontroverted examining physicians' reports establish that he was disabled as of January 16, 2002, not as of May 27, 2002, as the ALJ found.

On April 17, 2002, the report of examining physician Dr. Puzon established that DeClements was severely limited in his movements and could not work until surgery was performed to repair his hernia. Previously, on January 16, 2002, the report of examining physician, Dr. Waffle, established that DeClements was in extreme pain unless placed in head down position. An ALJ may reject an uncontroverted opinion of an examining physician only for clear and convincing reasons. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990). The ALJ failed to explain why he discredited the examining physicians' opinions, merely stating that he found DeClements was not credible until DeClements suffered a gunshot wound on May 27, 2002, and that the examining physician's opinions were not sufficiently complete.

We cannot determine from this record the date DeClements became disabled. The record shows that DeClements may have been incapacitated from the time he was released from jail on or about January 1, 2002, or may have become incapacitated at any time between then and the onset date the ALJ selected of May 27, 2002. Under similar circumstances, we have interpreted Social Security Regulation 83-20 to require that the ALJ may not draw medical inferences

alone but must call upon the services of a medical advisor to review the medical record and determine the correct onset date. *Armstrong v. Comm’r of the Soc. Sec. Admin.*, 160 F.3d 587, 590 (9th Cir. 1998).

Accordingly, we **VACATE** the district court’s order and **REMAND** with instructions that the ALJ be directed to select a medical advisor to assist him in determining the date DeClements became disabled.

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***DeClements v. Astrue*, Case No. 09-35260**
Rawlinson, Circuit Judge, concurring:

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I concur in the decision to remand this matter for the Administrative Law

Judge (ALJ) to utilize the services of a medical consultant to substantiate the onset

date determined by the ALJ.